STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
26CV001244-440

FUSE 10, LLC,

Plaintiff,

v.

CEDARS LODGE & SPA, L.L.C. and 719NOMAIN LLC,

Defendants.

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR APPOINTMENT OF RECEIVER

This matter involves a partially-constructed luxury residential / hotel development in Henderson, North Carolina which serves as collateral for over $40 million in loans, including an approximately $32 million loan from Plaintiff. The loan to Plaintiff matured in December 2025 and Defendants have been unable to pay it. Moreover, Defendants have ceased construction activity on the project for many months and have been sued by their general contractor for almost $7 million. In addition, Defendants took millions of dollars in deposits from buyers of units in the development, who have not received return of their deposits or a completed unit. The partially-completed building has been sitting for months exposed to the elements and with no progress. Defendants have been unable to come up with additional financing or the means to pay their existing creditors. Given these circumstances, among others, the immediate appointment of a receiver over the Defendants is necessary to protect Plaintiff's interests and to ensure that no further waste and dissipation takes place.

FACTS[1]

1. Defendants are North Carolina limited liability companies which own eight tracts of land in Hendersonville, North Carolina which are being developed as a high-end residential / hotel condominium building (Verified Complaint ("Compl."), ¶¶ 8-17).

2. To fund the construction, Defendant Cedars obtained a $32 million construction loan from Plaintiff Fuse 10, LLC ("**Plaintiff**" or "**Lender**"). That loan was evidenced by multiple loan documents and secured by a first priority lien against Defendants' real estate and personal property. Compl. ¶¶ 18-25.

3. Defendants also obtained junior financing, and took pre-construction deposits from buyers of units. Compl. ¶¶ 26, 33.

4. The loan from Fuse matured in December 2025. Defendants have failed to pay the loan. Compl. ¶¶ 27, 36-38.

5. The building which Defendants were constructing on their property is only partially constructed and has been sitting for months with no construction activity.

6. The general contractor for the project sued Cedars for breach of contract for almost $7 million and has asked for foreclosure of the real property to satisfy its claim of lien. Compl. ¶ 34

[1] The relevant facts are laid out in detail in the Verified Complaint, which is incorporated herein by reference. Plaintiff has included a shorter version of the key facts in this brief.

7. The partially constructed building is in danger of deterioration and Defendants have not obtained funding to complete the project, despite Lender not exercising its default remedies for almost six months from the time the loan matured.

ARGUMENT

The appointment of a receiver in this matter is appropriate on multiple grounds. A receiver may be appointed before judgment when the plaintiff "establishes an apparent right to property that is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired." N.C. Gen. Stat. § 1-502(1). Appointment is also proper under the North Carolina Commercial Receivership Act (the "NCCRA"). The NCCRA provides that a general receiver may be appointed over a company when that company "is insolvent," "is not paying its debts as they become due," "is unable to pay its debts as they become due," "is in imminent danger of insolvency," or "in other cases as provided by law and equity". N.C. Gen. Stat. §§ 1-507.24(e), 1-507.24(g).

The Court also has the right to appoint a receiver as part of its inherent equitable authority. *See generally* N.C. Gen. Stat. § 1-507.21(a) (noting that receiverships can be instituted under "the equitable power of the courts"); *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 577, 273 S.E.2d 247, 256 (1981) ("[I]t is elementary that a Court of Equity has the inherent power to appoint a receiver, notwithstanding specific statutory authorization."). Finally, the Loan Documents specifically contemplate and give Lender the right to have a receiver appointed. (*See* Compl. ¶ 40).

A. Lender is likely to succeed on the merits of its claims.

Appointment of a receiver in this Action is appropriate and is the only cause of action sought in the complaint. The Loan Documents are valid, enforceable contracts which grant Lender a first priority secured interest in the Defendants' real and personal property. There is also no dispute that Defendants are in default under the Loan Documents for failing to pay the Loan in full by its December 2025 maturity date.

A receiver should be appointed because Lender has established "an apparent right to property that is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired." N.C. Gen. Stat. § 1-502(1). *See York v. Cole*, 251 N.C. 344, 345, 111 S.E.2d 334, 335 (1959) (affirming appointment of receiver on the strength of plaintiff's complaint, which "sufficed to support a finding that plaintiff had established an apparent right to the property, and if the property were left in defendants' possession plaintiff was in danger of losing the rents and profits.). In this case, the real property is sitting unfinished and Defendants have made no progress to completing construction in the past months. If the property is allowed to remain in its current unfinished state, the partially completed building will deteriorate and the cost of construction to complete will be significantly increased, to the detriment of all creditors and parties in interest.

B. Appointment of a general receiver is appropriate under North Carolina statutes and on equitable grounds.

The NCCRA provides that a general receiver may be appointed over a company when that company "is insolvent," "is not paying its debts as they become due," "is unable to pay its debts as they become due," "is in imminent danger of insolvency," or "in other cases as provided by law and equity". N.C. Gen. Stat. §§ 1-507.24(e), 1-507.24(g). All of these criteria are met in the case. It cannot be disputed that Defendants are not paying their debts as they become due; after all, they failed to pay the Note at its December 2025 maturity date. Defendants appear to be in significant financial distress. Their debts appear to be well over $50 million dollars, and they have not timely paid their general contractor (as evidenced by its lawsuit) or finished construction of the building as promised. Consequently, all the statutory requirements are satisfied, and the Court should appoint a general receiver as provided by law and equity. *See* N.C. Gen. Stat. §§ 1-507.21(a), 1-507.24(g).

C. The Liberty Solution, LLC is an appropriate receiver.

Lender requests that the Court appoint The Liberty Solution, LLC ("**Liberty**") as receiver. Liberty is a well-regarded company that has been appointed as a receiver on numerous occasions by the North Carolina courts, including appointment by the North Carolina Business Court just a few weeks ago in the case of *AFF Mountaineer LLC v. Radify Asheville LLC* (Buncombe County) which involved a non-operating hotel that was supposed to have been renovated with funds from a construction loan. Liberty has substantial experience in overseeing partially constructed commercial development projects and has been appointed as receiver over such projects on multiple occasions.

Liberty satisfies all the qualifications for a receiver required by N.C. Gen. Stat. § 1-507.25 as laid out in detail in the Affidavit of Brian Gribble attached to the Motion. Liberty is prepared to post a reasonable bond as required by the Court. Moreover, its proposed rates are reasonable as laid out in the Brian Gribble Affidavit and have been approved by this Court in the past.

Wherefore, Lender requests that the Court enter an Order:

1. Appointing The Liberty Solution, LLC as general receiver of the Defendants with all powers of a receiver listed in N.C. Gen. Stat. § 1-507.28;

2. Ordering Defendants, their members, managers, agents and affiliates to immediately turn over to the receiver all property, rents, leases accounts, books, records, and assets of every kind and nature belonging to the Defendants (including all electronic records) for the receiver's review and exclusive control and management;

3. Authorizing Liberty as general receiver to maintain control of the Defendants and their property, and to take all other necessary acts of a general receiver, as permitted by applicable law or as ordered by this Court, including pursuing any applicable claims or causes of action; and

4. Granting Plaintiff such other relief as the Court deems proper.

This 3rd day of June, 2026.

/s/ William L. Esser IV
William L. Esser IV, N.C. Bar No. 29201
Parker Poe Adams & Bernstein LLP
620 South Tryon Street, Suite 800
Charlotte, North Carolina 28202
willesser@parkerpoe.com
Telephone: (704) 372-9000
Facsimile: (704) 334-4706
Attorneys for Plaintiff

CERTIFICATE OF WORD COUNT

Pursuant to Business Court Rule 7.8, the undersigned certifies that the foregoing ***Brief in Support of Plaintiff's Motion for Appointment of Receiver*** does not exceed 7,500 words (including footnotes and endnotes, but excluding case caption, signature blocks and required certificates) as determined by the word count function of the word-processing system used to prepare the brief.

This the 3rd day of June, 2026.

/s/ William L. Esser IV
William L. Esser IV, N.C. Bar No. 29201
Parker Poe Adams & Bernstein LLP
620 South Tryon Street, Suite 800
Charlotte, North Carolina 28202
willesser@parkerpoe.com
Telephone: (704) 372-9000
Facsimile: (704) 334-4706
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ***Brief in Support of Plaintiff's Motion for Appointment of Receiver*** (including the attached Affidavit) was served upon the following parties or parties in interest via electronic mail as follows:

Paul Fanning
Ward & Smith
PAF@wardandsmith.com
Counsel for Defendants

Ryan Beaver
Bradley
rbeaver@bradley.com
Counsel for Turner Construction Company

Todd A. Jones
Haynsworth Sinkler Boyd
tjones@hsblawfirm.com
Counsel for Baker Concrete

Matt Weiner
Poyner Spruill
mweiner@poynerspruill.com
Counsel for Cedars Lodge and Spa EB-5 Funding, LLC

David Hilton
Hilton Silvers & McCLanahan, PLLC
David@HSMlawyers.com
Counsel for RGC Rick Gilchrist Co., Inc.

Eugene Rash
Smith Currie Oles LLP
gfrash@smithcurrie.com
Counsel for Power Design, Inc.

This the 3rd day of June, 2026.

/s/ William L. Esser IV
William L. Esser IV, N.C. Bar No. 29201
Parker Poe Adams & Bernstein LLP
620 South Tryon Street, Suite 800
Charlotte, North Carolina 28202
willesser@parkerpoe.com
Telephone: (704) 372-9000
Facsimile: (704) 334-4706
Attorneys for Plaintiff